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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
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9 In the Matter of the Application of:

10 **J.K.**  
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**Precedent Decision No. 01 – 06**

12 A hearing on this application was held on August 10, 2001, in Martinez, California, by  
13 Donna D. Ferebee, Hearing Officer, who was assigned to hear this matter by the Executive Officer of  
14 the California Victim Compensation and Government Claims Board (Board).

15 The applicant, J.K., attended the hearing.

16 **Claim History**

17 The application, arising from a battery on June 12, 2000, was received on July 6, 2000; was  
18 recommended for denial on the May 8, 2001, consent calendar; and was timely appealed. The  
19 application requests assistance for medical expenses.

20 **Summary of Issues**

21 Staff recommended the application be denied because staff determined that J.K. failed to  
22 reasonably cooperate with law enforcement in the apprehension and conviction of the perpetrator.

23 **Findings of Fact**

24 According to the police report, the police responded to a report of a loud verbal and physical  
25 altercation outside the All Star Gas Station store on June 12, 2000. When the police arrived, they  
26 found J.K. sitting on the ground in front of the store with lacerations to his forehead and cheek, a  
27 bloody nose, and a swelled right eye. The officers noted that J.K. was conscious but unable to say  
28 what happened. Then J.K. told police that he had been jumped by several unknown suspects. The  
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1 medics arrived to take J.K. to the hospital, and one of the medics reportedly told police that J.K. said  
2 he had consumed seven beers before the incident occurred. At the hospital, J.K. told police that he  
3 remembers entering the gas station store to pay for gas, and when he left the store, he was jumped.  
4 According to the report, J.K. told police that the only person he has a "beef" with is A.C., but he did  
5 not know whether A.C. was his attacker, he stated that he could not remember very much because he  
6 was drunk.

7 The officers on the scene interviewed Mr. M. the store clerk who called the police. Mr. M.  
8 reported that he heard A.C. and J.K. talking to each other, and then he saw A.C. punch the victim in  
9 the face, and could tell that the victim was being kicked while on the ground. He reported that Mr. T.  
10 was laughing as A.C. was being attacked, and when it was over, Mr. T. told Mr. M. that this would be  
11 his last night at work.

12 On June 14, 2000, the police contacted J.K. for a more detailed statement. J.K. told police that  
13 he knew A.C. from when they were kids growing up, and that he does not like him as they have  
14 different friends. J.K. reported that he was hit from behind without any provocation.

15 According to the report, officers interviewed a witness named T.L. who reported that he had  
16 gone with J.K. to the gas station but waited outside while J.K. went into the store. T.L. reported that  
17 while J.K. was in the store, he recognized A.C. and two or three other individuals standing outside the  
18 store. T.L. stated that he knew A.C. and J.K. did not get along, so he went into the store to tell J.K.  
19 that A.C. was outside. According to T.L., J.K. put a beer down that he was about to purchase, and  
20 went outside and confronted A.C., saying "let's squash this," referring to their previous problems.  
21 T.L. reported that A.C. then punched J.K. who then fell and hit his head. T.L. reported that the others  
22 then stomped on J.K.'s head and A.C. ordered one of them to steal J.K.'s car, which he did.

23 On June 14, 2000, officers interviewed A.C. who reported that he was walking from the gas  
24 station against traffic when a car came up behind him going the wrong way and almost hitting him.  
25 A.C. reported that he followed the car to the gas station and then observed that the driver was J.K..  
26 A.C. reported that J.K. came out of the store and started a verbal altercation with him and said "I'll hit  
27 anyone I want" and then proceeded to push A.C. A.C. reported that he then took off his watch  
28 because J.K. wanted to fight. A.C. admitted that he hit J.K., but told police that he never told anyone  
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1 to steal his car. He also told police that he tried to help J.K. up off the ground, but people came out of  
2 the store so he walked away.

3 A.C. told police that another witness, R.D., saw the incident, and that she would be calling to  
4 report what she saw. R.D. called the police and reported that she observed a “tall guy” come out of  
5 the store and start yelling at A.C. in his face. She stated that A.C. hit the tall guy who then tried to hit  
6 back but missed. She then left the scene.

7 On June 14, 2000, an officer called J.K. to ask him further questions, but J.K. said, “I’ve been  
8 thinking about it. I got my car back and I’m not going to press charges.” The officer told J.K. that he  
9 still needed to ask him more questions, and J.K. said, “I’ll think about it.” The officer then said that he  
10 would need J.K. to sign a medical waiver to go forward with the investigation, or J.K. would have to  
11 sign a waiver of prosecution. Both forms were mailed to J.K., and both forms were signed by J.K. and  
12 returned to the officer. J.K. also left a voice mail with the officer stating that he still did not want a  
13 prosecution.

14 At the hearing, J.K. reviewed the file in detail, including the police report. He testified that he  
15 does not know who hit him, but that he and A.C. had an argument about three years ago and they  
16 belong to different groups of friends that do not get along. J.K. testified that his friends associate with  
17 the “TMK” (The Mad Kings) gang while A.C. associates with the “BIC” (Boys in Crime) gang. J.K.  
18 testified that he himself is not a member of a gang.

19 He testified that he could not cooperate with the police because he did not know who hit him.  
20 He testified that the last thing he remembers is being inside the store preparing to purchase cigarettes  
21 and then leaving and being hit from behind. He testified that he did not cooperate with the police  
22 because if the public defender had asked him if he remembers seeing the person who hit him, he  
23 would have to say “no.” He testified that he could not help the police if he wanted to. The Hearing  
24 Officer asked J.K. if he was willing to assist the police in any way he could, and he responded that if  
25 he could have seen the surveillance tape<sup>1</sup> and who attacked him, he would have cooperated. The  
26 Hearing Officer asked J.K. if he told the police that “he would think about it” when asked for more  
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28 <sup>1</sup> The police report noted that the store’s surveillance system was not operating properly, and the incident was not recorded  
29 on tape.

1 information, and J.K. responded that that was possible, but he does not remember. He testified that he  
2 thinks he had a concussion and was suffering from memory loss. He testified that he was in the  
3 hospital for a few hours.

4 When the Hearing Officer asked J.K. about R.D.'s statement to the police that she saw a "tall  
5 guy" come out of the store and start yelling at A.C. in his face, J.K. testified that that is not what  
6 happened. J.K. also testified that T.L.'s story has changed many times, and he no longer considers  
7 T.L. a friend.

### 8 **Determination of Issues**

9 The Board shall approve an application for assistance if a preponderance of the evidence shows  
10 that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov.  
11 Code, § 13964(a).)

12 A victim who failed to reasonably cooperate with a law enforcement agency in the  
13 apprehension and conviction of the perpetrator of the qualifying crime may not receive program  
14 assistance. (Gov. Code, § 13964(c)(2).) Conduct that adversely affected the ability to investigate a  
15 qualifying crime may constitute a failure to cooperate with law enforcement. (Cal. Code Regs., tit. 2,  
16 § 657.1(f).)<sup>2</sup> A victim may be found to have failed to cooperate with law enforcement even if his  
17 failure to completely and truthfully respond to requests for information in a timely manner did not  
18 adversely affect law enforcement's ability to investigate the crime. (Reg., § 657.1(h).) A victim's  
19 physical condition may be considered when assessing whether a victim reasonably cooperated with  
20 law enforcement. (Reg., § 657.1(j)(2).) Completely and truthfully responding to requests for  
21 information in a timely manner is one element of cooperating with law enforcement. (Reg., §  
22 657.1(e)(2).) The assessment of a victim's cooperation with law enforcement shall be based on all  
23 available evidence. (Reg., § 657.1(k).)

24 An application may be denied, in whole or in part, if the Board finds that denial is appropriate  
25 because of the nature of the victim's involvement in the events leading to the crime. (Gov. Code, §  
26 13964(b).) Evidence of a victim's involvement in the events leading to the qualifying crime obtained by  
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29 <sup>2</sup> All citations to regulations are to California Code of Regulations, title 2.

1 an investigating law enforcement agency may be given significant weight. (Reg., § 656.1(e).) The  
2 Board may consider the following factors when determining whether a victim was involved in the events  
3 leading to the qualifying crime as a result of mutual combat: (1) an implicit or explicit agreement to  
4 fight; (2) a deliberate threat by the victim; (3) the victim's conduct indicated the intent to carry out a  
5 deliberate threat; (4) the victim's deliberate conduct reasonably provoked the other party to initiate a  
6 physical altercation; and (5) the victim initiated a physical altercation that led to the qualifying crime.  
7 (Reg. § 656.4.)

8 The issue raised in the staff recommendation is failure to reasonably cooperate with law  
9 enforcement in the apprehension and conviction of the perpetrator. The police report indicates that  
10 J.K. refused to provide further information to the investigating officers upon their request, and that  
11 J.K. signed a waiver of prosecution and left a message with the officer that he does not want a  
12 prosecution. At the hearing, J.K. confirmed that this is true. J.K. failed to provide any believable  
13 reason why he would not cooperate; fear that he would not know the answers to a criminal defense  
14 attorney's questions is not a valid reason. J.K. could have cooperated with the police by answering all  
15 of their questions to the best of his ability, whether or not he saw who hit him. Instead J.K. declined to  
16 assist the police, and stated that he does not want a prosecution. Answering law enforcement's  
17 questions fully and completely is what J.K. was obliged to do, whether or not he had information that  
18 could have helped the police. It is law enforcement's job to determine what information is and is not  
19 helpful. Because J.K. was unwilling to answer all of law enforcement's questions, and subsequently  
20 tendered his waiver of prosecution, the police closed the case. It is found that J.K. failed to reasonably  
21 cooperate with law enforcement in the apprehension and prosecution of the perpetrator.

22 It is found that this case is distinguishable from Precedent Decision No. 01-04 (In the Matter  
23 of the Application of R.C.). In that case, it was found that there was insufficient evidence that R.C.  
24 failed to cooperate with law enforcement when the police repeatedly questioned R.C. while he was in  
25 pain and in need of medical attention. It was also found that R.C. responded to the officer's questions.  
26 In this case, J.K. declined to answer questions asked of him two days after the incident, at a time when  
27 he was not in the hospital or in need of immediate medical treatment. By declining to answer all of  
28 law enforcement's questions, J.K. failed to reasonably cooperate with law enforcement.  
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1 A second issue is whether or not J.K. was involved in the events leading to the qualifying  
2 crime as a result of mutual combat. This issue warrants discussion although the staff recommendation  
3 did not raise it.<sup>3</sup> Although, J.K. vehemently denies even seeing A.C., witness statements contained in  
4 the police report clearly indicate that J.K. had exchanged words with A.C. prior to the incident. There  
5 is in fact evidence that J.K. instigated the fight. It is most likely that if J.K. remembers standing in the  
6 store getting ready to purchase cigarettes, he would remember why he did not make the purchase and  
7 instead walked out the door. It is likely that he knew A.C. was outside and went to confront or at least  
8 speak to him. This is mentioned because it weighs on the overall lack of integrity of J.K.'s testimony.  
9 No specific finding is made as to J.K.'s involvement though, as the finding that J.K. failed to  
10 reasonably cooperate with law enforcement is a complete bar to his eligibility for program benefits.

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12 **Order**

13 The application is denied. J.K. is not eligible for program assistance.

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15 Date: August 31, 2001

16 DONNA D. FEREBEE  
17 Hearing Officer  
18 California Victim Compensation and  
19 Government Claims Board  
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27 <sup>3</sup> The Hearing Officer informed J.K. that the facts may give rise to a finding that he was involved in the events leading to  
28 the qualifying crime due to mutual combat, and that such a finding would mean that he may not be eligible for program  
29 assistance. J.K. indicated that he understood that the Hearing Officer would be considering that potential issue.

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**Precedent Decision No. 01 – 06**

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12 On October 19, 2001, the California Victim Compensation and Government Claims Board  
13 adopted the attached Decision as a Precedent Decision in the above-referenced matter. The Decision  
14 became effective on October 19, 2001.  
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16 Date: October 30, 2001

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18 JANICE HILL  
19 Acting Chief Counsel  
20 California Victim Compensation and  
21 Government Claims Board  
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